

A Brief

HISTORY OF THE SUCCESSION,

Collected out of the RECORDS, and the most
Authentick HISTORIANS.

Written for the Satisfaction of the EARL of H.

MEn generally, at present, busy themselves in discoursing about the Succession, and therefore cannot but be pleased to have a short History of it set before them: For by seeing how the Crown has descended, and in what manner, and upon what grounds the natural Course of the Descent hath been changed, they will be enabled to judge what has been the Opinion of all Ages, in this so controverted a Point, and thereby may safely direct their Own.

Nothing certain has come down to us of the Nature of the Government of this Island before the *Romans* came hither; only this we learn from *Cesar*, and *Strabo*, and *Tacitus*, That the *Britans* were subject to many Princes and States; not confederate, nor consulting in common, but always suspecting, and frequently warring with one another.

During the *Heptarchy*, whilst every Kingdom was govern'd by different Laws, we cannot think they agreed in one Rule of Succession: But, if that does not, I am sure, the reading the many Changes and Confusions of those Times must convince any man, that their Rule was uncertain, or else that they had no Rule at all.

Those seven Kingdoms were at last united under *Egbert*: But yet our Historians who lived nearest those Times, express themselves so oddly in this Matter, and do so constantly mention the Election of almost every King before they tell us of his Coronation, that some learned men have doubted, whether before the Conquest the Government of this Island was ever grown up into a settled Hereditary Monarchy. Surely if it were so, yet all must agree, that (a) then the Succession was not guided by the same Rules, as some men believe or pretend it ought now to be. *Egbert* himself, the first *English* Monarch, came to the Crown, not by Succession but Election, being no way related to *Brissicu*, the last of the *West-Saxon* Kings; and when he died, he gave the Kingdoms of *Kent* and *Essex* to his second Son. (b) *Ethelwolf* divided the whole Island between his two Sons *Ethelbald* and *Ethelbert*. (c) *Ainelfstan* (though a Bastard) succeeded his Father, and was preferred to his legitimate Brothers. (d) *Edred*, the younger Brother of King *Edmond*, was advanced to the Throne, though the deceased Prince had two Sons, *Edwin* and *Edgar*, who did both of them reign afterward successively. *Edgar* left a Son at his Death; but yet there hapned a mighty Contest about his Successor, (e) some of the great men contending for the Election of *Egelred* his Brother. But at last the Interest

Cæs. de Bell. Gall. lib. 5.
Tacitus in vita Jul. Agricola Strab. lib. 4.

(a) *Pol. Virg. Hist. Angl. l. 4. in fine. Will. Malmes. l. 1. c. 2. fol. 16. l. 2. c. 1. fol. 36.*

(b) *Hen. Hunt. l. 3. fol. 348.*

Will. Malmes. lib. 2. c. 3. f. 41.

(c) *Will. Malmes. l. 2. c. 6. f. 48.*

(d) *Will. Malmes. l. 2. c. 6. f. 55.*

Reg. Hoved. par. 1. f. 423. Hen. Hunt. l. 3. f. 355.

(e) *De Rege Eligendo magna inter Regni Primores oborta est dissensio*

Simeon Dunelm. an. 975. f. 160

Edwardum Elegerunt Electum consecraverunt,

et in Regem unxerunt Sim. Dunelm ubi su-

of *pra.*

A

(f) *Gloriosus Rex Ethelridus Ailred Rievallis* fo. 372.

(g) *Fuit magnus coram Rege Episcoporum Convencus* Reival. ubi supra.

(h) *Præbet Electioni Rex consensum* Ailr. Ab. Reival. ubi supra.

(i) *Episcopi Abvates Duces Quique nobiliores Angliæ in unum congregati pars consensu Canonicum in Dominium & Regem Eligere omnem progeniem Regis Ethelredi repudiantes* Sim. Dunelm an. 1016. f. 173. Brompt. f. 933.

Rog. Hovedon 1 par. f. 434.

(b) *Placitum magnum de Regni Successione apud Oxonium factum est* Brompt. 932.

Canuto mortuo facta est apud Oxonium magna alteratio de Regni Successione Hen. Knyht. de event. Angl. Hen. Hunt l. 6. f. 364.

(c) *Post mortem Heraldi Hardiknute Electus Rex*, Hen. Hunt l. 6. f. 365.

(d) *Omnes Anglorum magnates ad invicem tractantes de communi Concilio & Juramento statuerunt, quod nunquam temporibus futuris aliquis Dacius super eos in Angliâ regnaret.*

Brompt. 934.

(e) Brompt. 945.

of Edward the Son prevail'd, and he was in a full Assembly elected, consecrated, and anointed King. That which *Ailredus*, Abbot of *Rievallis*, in his Life of *Edward* the Confessor, gives an account of, seems very remarkable to our purpose. King *Ethelred* (f) (who was no tame and easie Prince) desirous to establish his Successor in his Life-time, (g) summon'd a great Council expressly for that purpose, and proposes the thing to them. The Council were divided, some of them appearing for *Edmond* his eldest Son, and some for *Alfred* his second Son by Queen *Emma*. But at last, upon some superstitious Fancy, they agreed to pass by both of them, and elected the Infant that was in the Queens Womb. To which Election the King gave his (h) Royal Assent, and the whole Assembly swore Fealty to the Child whilst yet unborn. Undoubtedly this Story makes it plain, that it was not enough at that time to entitle one to the Crown, that he was the Kings Eldest Son, for then *Ethelred* would never have suffer'd a Debate about the Election of a Successor, nor summon'd a Parliament expressly for that purpose, which you see he thought necessary to be done. And notwithstanding all his care it seems upon the Death of *Ethelred*, *Canutus* had so great an Interest, that by an unanimous consent in a full (i) Council he was elected King, and all the Issue of the last Prince rejected. 'Tis true, the *Londners* stood firm to *Edmond Ironside*, (the approbation of that renowned City had then no little Influence on the Succession) and there were divers Battels fought between them; but at last they came to an Agreement, and *Edmond* dying, the *Dane* ruled the whole Island peaceably whilst he lived.

Immediately upon the Death of *Canutus*, there was assembled at *Oxford* (b) a great Council to determine who ought to succeed; where, notwithstanding all the Interest which *Godwin* Earl of *Kent*, and the *West Saxon* great men, could make on the behalf of *Hardiknute*, the legitimate Son of the dead King, they were over-voted, and *Harald Harefoot* (his Bastard, begotten on *Ailena* or *Elgiva*) was elected. *Harald* dy'd in the 5th. year of his Reign, and (c) then the People were content to accept of *Hardiknute* for their King, and so that end sent for him out of *Flanders*; but he dying Issueless, it was ordained in a (d) General Council, that never any *Dane* should for the future be admitted to Reign in *England*. After which they proceeded to elect *Alfred*, the Son of *Ethelred*, and he being murder'd by the Treachery of Earl *Godwin*, they chose his Brother *Edward*, commonly called *Edward the Confessor*. Nor were these Elections of theirs made with any respect to nearness of Blood, more than those whereof we have heard before; for *Edmond Ironside*, their Elder Brother, had a Son then alive, (e) whose Name was *Edward*, and who was Father to *Edgar Atheling*, living also at the same time. And though this *Edward* had an undoubted Title to the Crown, if proximity of Blood could have given it, yet the *Confessor* was so far from suspecting any danger from such a Title, as that he invited his Nephew into *England*, and welcom'd him when he came with the greatest expressions of Joy, and entertain'd him with the greatest Confidence. Nor had the People any regard to this Royal Blood upon the Death of the *Confessor*, but elected *Harald*, the Son of Earl *Godwin*, who had no pretence of Kindred to the *Saxon* Line.

These few, among many other Instances which may be given, will shew plainly enough, how men entituled themselves to the Crown in those days, and that then it was no strange thing to hear of a Parliaments meddling with the Succession. Therefore I suppose the men who seem astonish'd at the boldness of a Parliament, in presuming to speak of it at this time, will say, that they ought not to be troubled with Preidents before the *Norman* Conquest; and that though the *Saxons* might be guilty of preferring a brave and deserving Bastard, before a cruel or a silly legitimate Prince, and of many other Irregularities, yet no such things are to be found in our Histories since the time of *William* the first, whose Reign is the great *Epoche*, from whence we do compute our Kings. Let us therefore go on more particularly to observe what has been done since that time, and we shall see whether they who wonder so much, have any reason to do so.

William

William the Conquerour was himself illegitimate, and yet succeeded his Father in the Dutchy of *Normandy*, and therefore had no reason to set any great value upon that sort of Title, which is derived from a Right of Blood. And it seems he did not much regard it; for passing by *Robert* his eldest, he gave the Crown (a) by his last Will, to *William Rufus* his younger Son, disposing only with regard to his own Inclinations, the Crown which himself had gain'd.

But his Son was too wise to rely upon this Disposition as a sufficient Title, and therefore had recourse to a more sure one: (b) For calling together the Nobles and wise Men of the Kingdom, he acquainted them in a full Council, with his Fathers Will, and desired their Consent to it; who after a long Consultation, did at last unanimously agree to make him their King, and thereupon he was Crown'd by *Langfrank*, Archbishop of *Canterbury*. I cannot but observe one thing farther, that though some men make use of the absolute Victory which the Conquerour had made, and affirm, that thereby the *English* were wholly broken, and all the old Laws and Customs of the Realm were destroy'd; yet it is plain that at this time the *English* Interest was so great, that it kept the Crown upon *William Rufus's* Head, in spite of all that the *Normans* could do in behalf of *Robert*, though they universally joyn'd with him. (c) For the King calling together the *English*, and opening to them the Treason of the *Normans*, and (d) promising them a complete Restitution of their ancient Laws, they stood firm to him, and soon put an end to all the Attempts of his Brother, and his *Norman* Accomplices.

animis in Regem accipit. Mat. Paris in vit Guil 2. fol. 14. anno 1088. (c) Rex fecit convocare anglos. Sim. Dunelm an. 1088. fol. 214. (d) Angli cum fideliter juvabant, &c. Sim. Dun. ubi supra.

Upon the Death of *William Rufus*, *Robert* had a fair pretence to renew his Claim to the Crown, (a) but that Prince had discover'd too much of the Cruelty of his Disposition, of his aversion to the *English* Nation, and of his proneness to Revenge; so that by the full Consent and Counsel of the whole Body of the Realm, assembled at *Winchester*, he was finally rejected, and they did concur to elect the Conquerour's third Son *Henry* for their King, (as *Mur. Westmister* expresses it.) Nor did they do this but upon Terms; for both the Clergy and Laity said, that if he would restore them their ancient Liberties, and confirm them by his Charter, and abrogate some severe Laws which his Father had made, they would consent to make him King. And this prudent and learned King was not ashamed or unwilling to own this Title; for he does at large recite it in his Charter whereby he confirms their Liberties, (b) *Scitis me misericordia Dei, & communi consilio Baronum Regni Anglia, ejusdem Regni Regem Coronatum esse, &c.*

H. de Knyght. c. 8. 2374. Post mortem *Willielmi Rufi* electus est *Henricus* frater ejus M. Paris 55. in vit H. 1. an. 1100. & 62. anno 1105. Mat. West. 235. Apud *Winton.* in Regem electus est. Brompt. 997. (b) *Rich. Hagulstad* 310. Brompt. 10. 21. Mat. Paris 240.

Henry the first you see had reason to believe and own the Power of the Kingdom, in setting the Crown upon what head they pleased, and therefore he desired to secure it that way to his Posterity. To that end, in the 1st year of his Reign, (c) he summon'd a Council, and procured all the great and powerful men of the Kingdom to swear that his Son *William* should succeed him: But afterwards this Son of his was unfortunately drown'd, and the King dy'd, leaving no other Issue but *Maud* his Daughter, who had been married to the Emperor, and afterward to *Geoffery Plantaginer*, Earl of *Anjou*. No dispute can be made, but that she had all the Right which proximity of Blood could give; yet *Stephen*, Earl of *Boloign*, who was the Son of *Adela*, one of the Conquerour's Daughters, and whose elder Brother *Theobald*, Earl of *Blois*, was then living, stept in before her, and by representing to them the Inconvenience of a Feminine Government, and promising them to consent to such good

(a) A patre ultima valitudine decumbente in Successorem adoptatus. Guil. Malmsh. lib. 4. fol. 120. Sim. Dunelm. anno 1087. fol. 213. Brompt. 1. 580. (b) Concedatis terræ magnitudus. Brompt. 989. Optimates successores ad Westmonasterium in Concilio convenire, ubi loci post longam Consultationem Guillelmum elegerunt Regem secutus. Mat. Paris. Flores hist. fol. 231. Volentibus omnium Provinciarum

(a) Hic Robertus semper contrarius & adeo interat Barones Regni Anglie, quod plenario consensu & consilio totius Regni, ipsum recusaverunt & pro Rege omnino recusaverunt. & Henricum fratrem in Regem crexerunt. (c) Coacto Concilio fecerunt omnes Principes & Potentes Anglicani Regni adiuvare terram & Regnum Willielmo filio suo, &c. Gervas Cron. 1138.

(d) *A primori*. and gentle Laws as they should devise, prevail'd (d) with the Estates of the *bus Regni cum* Realm to elect him King. And in this Charter, which he made soon after, he *favore Cleri &* owns this Title, beginning it thus, *Ego Stephanus Dei gratia, assensu Cleri &* *populi Electus* *Populi in Regem Anglia electus, &c.* And the Pope, in his Charter of Confir- *est a Wil. Cant.* mation, sent to him in the first year of his Reign, tells him, That he was *Archiepiscopo in* *Regem consecra-* *voto & unanimi assensu tam Procerum quam etiam Populi in Regem electus.* And *tur.* R. Hagul- then he adds, That since so universal an Assent could not be directed but by the *stad, an. 1156.* Divine Grace, he therefore allows his Title, and confirms him in the Kingdom. *f. 312.*

Consentientibus in ejus promotionem Willielmo Cantuariensis Archiepiscopo & Clericorum & Laicorum universitate *apud London, Jo. Hagulstad 250. Predictus Stephanus a cunctis in Regem electus, Gervas Chron. f. 349. Con-* *gregatis Londiniis terræ magnatibus, Mat. Paris 74.*

(e) *Hen. Hunt.* 'Tis true that afterwards *Maud* the Empress, together with her Son *Henry*, *l. 8. f. 395. R.* having, after some years, gained many to their side, gave him great distur- *Hag. de gestii.* bance; till at last *Stephen* having lost his Eldest Son *Emstace* (in whom he plac- *Steph. 314.* ed his hopes (e) and used all means, whilst he liv'd, to have got him declared

(a) *Facio* his Successor, but without Success) came to an Agreement with the Empress *Wintoniæ* and her Son, and (a) the Parliament, (who alone could give a Sanction to *convenit publi-* such Agreement,) was assembled at *Winchester* to confirm it; and then *ca, Rex Stephe-* *nus ipsum Du-* *cem cunctis vi-* *dentibus adop-* *tavit in Filium,* *utque, interpo-* *sito omnium ju-* *ramento, conce-* *dit & confirma-* *rit ei totius Angliæ principatum, Dux autem suscepit eum in locum genitoris, concedens ei omnibus diebus vite* *sua nomen & rem Regij culminis obtinere, Gervaf. f. 1375. In conventu Episcoporum & aliorum de Regno optum* *Mat. Westm. f. 246. an. 1153. & 282. an. 1154. Consenserunt in hoc omnes principes Regni Jo. Hagulstad f. 282.* *Mat. pacis 86. Hen. Hunt. l. 8. f. 398. Jo. Hagulstad 282. an. 1154.*

publishes this Agreement, *Brompt. 1037.*

In all this Transaction, certainly there was no consideration had of any other Right, but that which universal consent conferred; For if *Stephen's Heir* had any pretence, he had a Son then living, whose Name was *William*, and who by the same Agreement was to have all the Possessions which his Father enjoyed before he was made King. If the *Heir* of *Henry* the first had any Title, that was vested in *Maud* the Empress, who was then also living; so that neither of the parties had any other colour of Right to the Crown, than what the consent of the People gave them.

According to this Parliamentary Agreement and Limitation, *Stephen* enjoy'd the Crown peaceably during his Life, and after his Death *Henry* the *Second* came to it as peaceably; but he remembered by what Title, and therefore was desirous to secure it to his Son in the same manner; that he took a very dangerous and unusual way to do it. (b) For Summoning a Parliament to meet

(b) *Convene-* *runt interim* *die statuto ex* *mandato Regis* *Londoniam to-* *York, and Fealty Sworn to him by all.* This was the occasion of Civil Wars *Angliæ Epi-* *scopi Abbates* *Comites Barones* *vicecomites pre-* *positi Aldermani* *cum fideiussori-* *bus, Gervas* *H. 2. f. 1413.* between them, for the Father meant hereby only to have secured the Successi- *(c) Gervas H. 2.* *f. 1425.* on to him, and the Son was impatient of having only the bare Title of a King, all along pretending to an Equal Authority, as doth sufficiently appear by what he writes to the Prior and Convent of *Canterbury*, where he takes notice, That his Father did attempt some Invasions upon them, which he ought not to have done without his assent. (c) *Qui, ratione Regia unctionis, Regnum, & to-* *tius Regni curam suscipiemus,* and therefore he appeal'd to the Pope in that be- *half.* Nay, the Father himself paid that Respect to his Sons Dignity, That when he at last subdued him and his Rebellious Brothers, (d) he would not suffer him to do him Hommage with his other Sons, (though he offered it.) But *Henry* the Son dying in the Life of his Father, *Richard* was then his Eldest Son surviving, and consequently had all the Right which a next Heir could claim.

But

But the wise and wary King had not confidence enough to rely upon this (now so much talk'd of) sacred Right; but though he had already suffered so much (a) *M. Paris 84* from disobedient Sons, was glad to get the Succession confirmed to him in his (b) *Post tameli-* Life-time. And, the Truth is, there was reason enough that he should do so; *ri quam populi* for he had all his Children by *Eleanor* the Daughter of *William* Duke of *solennem & di-* *Guyen*, (a) who was before the Wife of *Lewis* the 7th King of France, who *nam R. de dæto* was still living, and the onely Divorced *causa Adulterii*, which being not a *f 547. R. H.* Divorce à *vinculo Matrimonii*, she could not, either by the Canon-Law uni- *par. 2. f. 6. 56.* versally received, or the Laws of England, lawfully Marry with any other (c) *Flo. Hist.* Husband. *An. 1190.*

After his Father's Death, *Richard* came to London, to which place all the Clergy and Laity were summoned; and (b) after he had been solemnly and duly Elected by the whole Clergy and Laity, (they are the very words of the Historian) and taken the usual Oaths, he was Crowned. And when he undertook the holy War, he (c) declared *Arthur* Son of his next Brother *Geoffery* the Duke of Britain, the next Heir to the Crown. *(d) Prælatorum Comitum & aliorum Nobilium multitudo infinita, Brompt. 1281.*

Richard dying without Issue, this *Arthur* ought to have succeeded, and his Sister *Elleanor* also had a Title before her Uncle: But *John* the younger Brother, without regarding this divine Right of his Nephew, applies himself to the People for a more sure, though but a humane Title, (d) who being summoned together, elected him King. And (e) *Hubert* the then Archbishop of *Canterbury*, did at his Coronation, preach a Doctrine, which would have founded very strangely to the Convocation in 1640. (viz.) No one could make any title to the Crown, *nisi ab universitate Regni unanimiter Electus*. And that he who was most worthy ought to be preferred. But (as he goes on) if any one of the Race of the deceased King, was more deserving than others, as *John* the Brother of the deceased King was, the People ought more readily to elect him; than a Stranger to the Royal Blood. This was all the Title King *John* pretended, and this was then sufficient to put by his Nephew. And in his (f) *Char-* ters, he does more than once own, that he owed his Crown to the election and favour of his Subjects. *(e) Mat. Paris, 127. An. 1199. Si aliquis ex stirpe Regis defuncti alius præpolleret prius & promissus & promissus in electione nemi ejus esse consentiendum. (f) Charta Moderationis fædi Magnifici, an. 130. ex vet. Reg. in Archiepiscopo Arch. Cant. he says he came to the Crown, Jure Hereditario & mediante tam Cleri quam Populi unanimi Consensu & Favo-*

But when King *John* gave over to dissemble his Nature, and went about to change his Religion (g) (for he made offers of that sort to the King of *Morocco*) when he discovered himself not to be that worthy man which the People supposed him to have been; they remembered whence he derived his Title, and proceeded, upon the same reason that they had chosen him, to make a new Election, (b) choosing *Lewis* Son of *Philip* King of France, who was next Heir to the Crown in the right of *Blanch* his Wife, Niece to King *John*, and Daughter to his Sister *Elleanor*, both the Children of *Geoffery* Duke of Britain, being dead before that time. *(g) Næpon & Legem Christi-anum, Quam vanam censuit relinquens, Legi Mahometis fides adhaeret. Mat. Par. 243.*

When King *Philip* heard of their choice, he contented to send his Son, being the rather induced thereto by this reason, (i) That *John's* Blood being corrupted by an Attainder of Treason in the Life-time of his Brother *Richard*, he was incapable of taking the Crown by Descent, and unworthy to take it any other way. *(h) Mat. Par. 279. Flo. Hist. an. 1216.*

transsum Regem Ricardum à Regno Angliæ injuste privare & inde de proditiōe accusatus & coram eo convictus, Damnatu fuit per judicium in Curia ipsius Regis, Mat. Westm. 275. Mat. Par. 281.

Lewis coming to London, was there Elected and Constituted King, swearing to preserve the Peoples Laws, and they swearing Allegiance to him: But he soon forgot his Coronation-Oath, and attempted several ways to introduce an Arbitrary Government, before he was well Established in his Throne: which the English soon repented: And King *John* happening to die very opportunely,

ly, The *Earl-Marshal*, calling together the Great men of the Kingdom, and placing *Henry* the third, then an Infant, in the midst of them, perswaded them to make him King, who was altogether innocent of his Fathers faults : (k) The *Earl of Gloucester* said this was contrary to their Oath to *Levis* : To which the *Marshal* replied, that *Levis* by breaking his Oath had absolved them from theirs ; and that he despised the *English* to set up the *French* ; and that he would be the destruction of the Realm. With whose Reasons the whole Assembly being convinced, cried out unanimously, *Fiat Rex* ; and accordingly they Crown'd King *Henry* the third, and soon after compelled *Levis* to renounce all pretences to the Crown.

(b) Mat. West.
275. Hen. de
Knight f. 2426
c. 15. l. 2.

Hen. de Knight
f. 2472. c. 16.
l. 2.

Henry the Third dying, after a long and troublesome Reign, his Son *Edward* the First, a Prince of great hopes, and whose Life answered the highest expectations, succeeded ; but whether he was the eldest Son of his Father, remains a doubt in History. The House of *Lancaster*, who derived themselves from his Brother *Edmond*, pretending always that *Edmond* was the Elder, and *Edward* the Younger Brother, and that *Edmond* was put by the Crown, by common Consent, for his Deformity.

Tho. Walsingh.
in Vir. Ed. 2.
f. 126.

Pol. Virg. l. 18.
f. 352.

Froissart 1. vol.
c. 14. Fructus
Temporum.

Part 7. f. 107.

Hen. de Knight
l. 3. c. 15.

f. 2549.

After the Death of *Edward* the First, his Son *Edward* the Second succeeded, but he degenerating from so great a Father, the People grew weary of his Irregular and Arbitrary Government. And a Parliament being by him summoned at *Westminster*, as all our Writers say, or as *Polydor Virgil* words it, *Principes Convocato Concilio pervenerunt Londin* (which I observe, only that we may know what *Polydor* means, when he makes use of the expression of *Principes in Concilio Congregati* ;) They presently entred into a consideration of the miserable state of the Nation ; and a Paper being publickly read, containing many Instances of the King's Misgovernment, all which he had confessed, they concluded he was unworthy to Reign any longer, and that he ought to be deposed ; and sent to him to let him know their Resolution, and to require him to renounce his Crown and Royal Dignity, otherwise they would proceed as they thought good. And they appointed Commissioners to go to him in their Names : The *Bishop* of *Ely* for the *Bishops* ; The *Earl* of *Warren*

(a) Quod Fili-
um suum Ed-
wardum possit
Regnatum
Eligissent,
Knight 2550.

for the *Earls* ; Sir *Henry Piercy* for the *Barons* ; and Sir *William Frussel* for the *Commons* , to resign their Homage up to him : which *Frussel* pronounced in all their Names, and formally deprived him of all Royal Power ; the form of which is particularly set down by *Knighton*. The King read this sad Sentence with extraordinary grief, and many complaints of those evil Counsellors who had seduced him ; but in the midst of his Sorrow. (a) he gave them thanks that they Elected his Son to reign after him. Thus was that glorious Prince *Edward* the Third elected King in his Fathers Life-time, *Et huic Electioni universus populus consensit*. *Walter* Arch-Bishop of *Canterbury*, who preached the Coronation-Sermon, took this for his Text ; *Vox Populi vox Dei*. By this

(b) Pol. Virg.
20. f. 295.

(c) Furi Here-
ditario ac eti-
am voto com-
muni singulo-
rum, H. Knight
l. 5. f. 2630.

we may see that all his Predecessors were not of Archbishop *Laud*'s minde, but thought there was a Divine Right somewhere else than where he placed it. Upon the death of *Edward* the black Prince, there was some Dispute whether *John* of *Gaunt*, the eldest surviving Son of *Edward* the Third, should Succeed *jure propinquitatis*, or *Richard* the Son of the *Black Prince* ; whereupon *Edward* the Third procured the Parliament to confirm the Succession to *Richard* the Second. And afterwards, when *Edward* the Third dyed, (b) *Polidorus Virgil* says, *Principes Regni habito Concilio apud Westm*. (you know what *Polidor* means by *principes*) *Richardum, Edwardi principis Filium, Regem di-*

Rot. Parl.
1 H. 4.

Pol. Virg. l. 5.

cunt, by their common Suffrages. In the 21 year of *Richard*'s Reign, a Parliament being assembled at *Westminster*, they drew up, by their common Consent, a Form whereby he did resign

sign

sign the Crown, and the name and power of King, discharging all his Subjects from all Oaths which they had taken of Allegiance to him, confessing himself thereby insufficient for the Government; and swearing never to make any pretences to the same for the future. All which he Pronounced and Subscribed, wishing, (if it were in his power,) to have Henry Duke of Lancaster for his Successour; but since it was not, he desired the Commissioners to signifie his Desires to the States of the Realm. The next day all the States of the Realm accepted his Resignation, and when that was done, they proceeded to read publicly his Coronation-Oath, and all the Breaches of it, that so it might appear how justly he had deserved to be deposed. All which are contained in Thirty three Articles, entred at large in the Rolls of Parliament, (and well deserve to be read) whereupon the States adjudged that he shall be Deposed, and appoint Commissioners *ad Deponendum eundem Richardum Regem ab omne Dignitate, Majestate & honore Regiis, vice nomine & autoritate omnium statuum predictorum, prout in Consimilibus casibus de antiqua consuetudine dicti Regni fuit observatum*: which the Bishop of St. Asaph did, in full Parliament, in their names, and by their directions. The same Commissioners were also to resign up to him their Homage and Fealty, and intimate the Sentence of Deposition; which they did accordingly, by the Mouth of Sir William Thirning, whose words are at large entred upon Record. Then did the Parliament proceed to choose Henry the Fourth King; And upon this Title onely did he rely, though he mentioned some other trifling ones, as that he challenged it, being then void, by Force, as Descended to him from King Henry the Third.

But this could give him no Title, for 'tis plain that whilst any of the Issue of Lionel Duke of Clarence, the Third Son of Henry the Third, were in being; no right of Blood could Descend to him, who derived his Pedigree onely from John of Gaunt, who was but his Fourth Son. And he plainly shewed what a good Opinion he had of a Parliamentary Title to the Crown, when in the 7th year of his Reign, he procured an Act of Parliament to pass, whereby the Inheritance of the Crown and Realms of England and France were settled upon himself for Life, and the Remainder entail'd upon his four Sons by name, and the Issue of their Bodies begotten. He was contented that it should be limited no farther, but that after failure of his own Issue, it should go according to the general direction of the Law. And he made a Charter soon after, whereby he settled the Crown pursuant to this Act of Parliament: *Post ipsum successore hereditibus suis de ipsius Corpore legitime procreandis*; which Charter was again confirm'd in Parliament, the 22 December, 8 H. 4. and the Original Charter is still to be seen in the Cotton Library. 7 H. 4. cap. 2.
Bucks Hist.
R. 3. l. 2. f. 50.

Immediately upon the Death of Henry the Fourth, a Parliament met at Westminster, and there, according to the custom of the Realm, it was debated who should be King: But all Men had entertained so good thoughts of Prince Henry, that without staying till the whole Assembly had declared him King, divers of them began to swear Allegiance to him. A thing strange, and without President, as only occasioned by the extraordinary Opinion which was generally conceived of him before.

And the certain Title vested in him by an Act of Parliament.

Princeps Henricus, factō Patris sui funere, Concilium Principum apud Westmonasterium Convocandum Curat, in quo de Rege

Rege Creando, more Majorum, agitabatur. Continuo aliquot Principe ultro in ejus Verba jurare ceperunt, quod Benevolentiae Officium Nulli, priusquam Rex renunciatus esset, praestitum constet. Adeo Henricus ab ineunte aetate spem omnibus optima Indolis fecit, Pol. Virg. l. 22. Hist. Angl. in Vit. H. 5.

Titus Liv. Mc.
in Bibl. Bod.
Cott. Record.
f. 666.

Henry the Fifth dying, and leaving but one Son, who was an Infant of Eight Months old, *Titus Livius* says there was some doubt whether he should be accepted as King; but as soon as his Fathers Funerals were Solemnized, the Estates of the Realm of *England*, Assembling and Consulting together, they declared *Henry* the Sixth to be their Sovereign.

Hubington's
Hist. E. 4. f. 10.

Cott. Rec. 670.
Fructus Temp.
part 7. f. 162.

Hubingt. E. 4.
f. 73.

In the Thirty fifth year of *Henry* the Sixth, a new Limitation of the Crown was made by Parliament, for though the King had a Son then living, yet it was Enacted, That during his own Life onely, *Henry* the Sixth should hold and enjoy the Crown, and that during his Life, *Richard* Duke of *York* should be reputed and stil'd Heir Apparent to the Crown, and that it should be Treason to compass his Death; and after the Death, Resignation, &c. of *Henry*, the Crown was limited in Remainder to *Richard* and his Heirs, with a Proviso, that if *Henry*, or any in his behalf, should endeavour to disanul or frustrate this Act, that then *Richard* should have the present possession of the Crown. And by force of this Act of Parliament, the same Duke of *York*, taking advantage of *Henry's* Violation of it, did lay claim to, and attempt the recovery of the Kingdom, as also did his Son *Edward* after him with better success; and *Edward* did openly insist upon this Title in the Speech which he made at his Coronation.

It was also Declared by *Edward's* first Parliament, in the first year of his Reign, that *Henry* the Sixth having broken the aforesaid Concord in many particulars, the Crown was duely devolved to *Edward* the Fourth by vertue thereof.

Afterwards *Edward* the Fourth being driven out of the Kingdom, in the Tenth year of his Reign, the Parliament did again entail the Crown on *Henry* the Sixth, and the Heirs Male of his Body, with the Remainder to *George* Duke of *Clarence*, Brother to *Edward* the Fourth, who was thereby also declared Heir to *Richard* Duke of *York*.

Buck's Hist.
Rich. 3. lib. 1.
fol. 20.

'Tis worthy observation, that both the Families of *York* and *Lancaster* claimed a Title by Act of Parliament; and as long as that Title continued, the Issue of *Henry* the Fourth had never any Disturbance from the Pretences of the House of *York*, who had undoubtedly the Right of Blood on their side: But as soon as *Richard* Duke of *York* had a Title vested in him, by the Statute made in the Thirty ninth year of *Henry* the Sixth, then he thought it was worth contending for; nor did he and his Son desist till they had driven out *Henry* the Sixth.

Edward the Fourth did recover the Kingdom again as suddenly as he lost it, and prevail'd with his Parliament to repeal that Law which was made during his Expulsion, and so left the Crown to that young unfortunate Prince *Edward* the Fifth, who held it not long enough to have it put on him with the usual Solemnity; for though he was Proclaimed, he was never Crowned King: For his Uncle *Richard* Duke of *Gloucester* having secured him and his Brother in the *Tower*, did cunningly insinuate the Bastardy of his Nephew, and that *Edward* the Fourth had another Wife living at the time of his Marriage to their Mother, and also at the time of their Birth.

The

The Report found Credit universally, in so much that the Duke of Buckingham coming to him at Baynards-Castle; with most of the great Lords and wise men of the Kingdom, and the Mayor and Aldermen of London, the Duke did in their Names acquaint him, that they had unanimously thought fit to elect him King, as being Heir to the Royal Blood of Richard Duke of York, upon whom the Crown was entail'd by the High Authority of Parliament.

'Tis very remarkable, that in the midst of their highest Flatteries and Courtship to him, they tell him only of this great and sure Title by Act of Parliament; although if he had been indeed (what was pretended) the Heir of the House of York, his Right by Descent from Edward the Third was unquestionable.

Richard (after some feigned Excuses) did at last accept of their Offer *cott. Rec. fol. 709.* and Election; and the Parliament being soon after Assembled, they presented a Bill to this effect: *Please it your Grace to understand the Consideration, Election and Petition under-written, of the Lords Spiritual and Temporal, and of the Commons, &c. And thereby they Declare the Children of Edward the Fourth illegitimate, and that his Brother George Duke of Clarence was attainted of High-Treason by Parliament, in the 17th year of Edward the Fourth's Reign, by reason whereof all the Issue of the said George were and are disabled and barr'd of all Right and Claim, that in any case they might have or challenge by Inheritance to the Crown and Dignity Royal of this Realm, by the ancient Laws and Customs of the same.* After which, considering that none of the uncorrupted lineal Blood of Richard Duke of York could be found but in his Person, (say they) We have chosen and do choose you our King and Sovereign Lord. Then the Bill proceeds, in reciting that all the Learned in the Laws do approve his Title, and declaring him King as well by Right of Consanguinity and Inheritance, as by lawful Election, and entails the Crown on him and the Heirs of his Body, and declares his Son Heir Apparent. To which the King gave his Royal Assent in these words: *Et idem Dominus Rex, de Assensu dictorum trium Statuum Regni, & Autoritate predicta, omnia & singula premissa, in Billis predictis contenta concedit, & ea pro vero & indubio pronunciat, decernit, & declarat.* *Bucks Rich. 3. lib. 1. fol. 22.*

But the barbarous Murder of his Nephews did soon beget such an universal Detestation of Richard in the minds of the People, that they resolved he should no longer Reign over them; and so, taking hold of a Pretence which Henry Duke of Richmond set up, they joyn'd with him against Richard. Though Henry's Title was indeed no more than a meer Pretence; for not only the Right of the House of York, (as far as Blood could give Right) was before that of the House of Lancaster, but also he had no manner of Interest in that Title which the Lancastrian Line had, since his Claim was under a Bastard, begotten in Adultery; and besides, his Mother, Margaret Countess of Richmond, as Heir to whom he pretended he claim'd, was then living. Therefore Comines, the most judicious Writer of that Age, and who knew well what was the sense of Europe concerning his Title, says plainly, (though he wrote in the time of Henry the Seventh) *Qu'il n'avait Croix, ne Pile, ne nul Droit, (comme Jeo Croy) ala Couronne d'Angleterre.*

Nevertheless, Henry having slain Richard in Bosworth-field, the Crown was there put on his Head by the Lord Stanley; with the general Acclamation of the People. But he was wise enough to think his Title to it was not very good, till it was made so by an Act of Parliament, and therefore in the first year of his Reign he procured one to pass in these words :

Bucks Rich. 3.
lib. 5. fol. 145.

For the Wealth, Prosperity, and Surety of this Realm of England, and for avoiding of all Ambiguities and Questions, (The wisest of our Princes you see had no little Opinion of the Authority of a Parliament in this point,) Be it Ordained, &c. That the Inheritance of the Crown of the Realms of England and France, with all the Preheminences and Dignities Royal to the same appertaining, and the Ligeances to the King belonging, beyond the Seas, &c. shall be, rest, remain and abide in the most Royal Person of our Sovereign Lord Henry the Seventh, and in the Heirs of his Body lawfully coming perpetually, with the Grace of God, and so to endure, and no other.

Lord Bacon
H. 7. c. 11, 12.

Thus did the wisest of our Kings establish himself, and the best of our Historians mentions it as one of the greatest Instances of his Wisdom, That he did not press to have this as a Declaration or Recognition of Ancient Right, but only as an Establishment of the possession which he then had; nor to have the Remainder limited to any person after the determination of his Estate, but was content with the Settlement upon himself, and the Issue of his own Body, leaving it to the Law, to decide what was to follow upon the failure of such Heirs.

Burnet's Hist.
of the Reformation, Col-
lect. ad lib. 2.
fol. 3, 4.

Nor can any thing be more clear, than that Henry the Seventh depended entirely on this Parliamentary Title, without extending any pretences of his, or his Wives, (who was Heir of the House of York,) beyond this Establishment, in as much as the Oaths of Allegiance and other publick Tests and Securities, which were required at that time of the Subjects, were not in general Terms, to the King, his Heirs, and Successors, but only to the King, and the Heirs Male of his Body lawfully begotten. An Instance of this, (without going any further) may be seen amongst the Records Printed at the end of the late History of the Reformation, where Cardinal Adrian, when he was promoted by Henry the Seventh to the Bishoprick of Bath and Wells, renounces all Clauses in the Popes Bulls, which may be prejudicial *Domini meo supremo, & Hæredibus suis corpore suo legitime procreatis, Angliæ Regibus*; and he does afterwards swear Allegiance to him in the very same Words, without taking any notice of Remoter Heirs.

Henry the Eighth, the Heir to this Entail, Succeeded his Father; and though he attempted as much for Arbitrary Power, and used Parliaments with as little respect as any of his Predecessors; Yet even he never doubted

doubted of their Power in settling the Succession, but valued it much, and resorted to it frequently.

In the 25th year of his Reign an Act passed, wherein the Parliament say, they were bounden to provide for the perfect *St. 25 H. 8. cap. 22.*
surety of the Succession; (they did not certainly reckon themselves bound to do a thing that was not in their Power.) And then they take notice of the great Mischiefs and Effusions of Blood which had happened by reason of the doubtfulness of the true Title; and for the avoiding of all future Questions, do Enact, That the Imperial Crown of this Realm shall be to King Henry 8th, and the Heirs of his Body Lawfully begotten on Queen Anne, and the Heirs of the Bodies of such several Sons respectively, according to the course of Inheritance; and for default of such Issue, then to the Sons of his Body in like manner; and upon failure of such Issue then to the Lady Elizabeth, and after her to any other Issue, in Tail, and then the Remainder is limited to the right Heirs of Henry the 8th. By the same Statute every Subject at his full Age is oblig'd to take an Oath to defend the Contents of it, and the refusal is made Misprision of Treason. And the next Parliament, which was *26 H. 8. c. 2.*
 held in the year following, does particularly Enact an Oath for that purpose.

Some few years after these Acts were Repealed, and the *28 H. 8. Raff. Crown 4.*
 Parliament Entailed the Crown upon the King, and the Heirs of his Body by Queen Jane; And Power is given the King for want of Issue of his Body to dispose of the Succession by his Letters Patents, or his last Will.

It is also made Treason, if any Usurp upon those to whom it is so appointed. Here the Parliament do not only use their Power of changing the Succession, but they Delegate it to another.

And in the thirty fifth Year of this King's Reign, the *35 H. 3. cap. 1.*
 Parliament by another Act take notice of the great and high Trust which the Subjects had in him, in putting into his hands wholly the Order and Declaration of the Succession; Yet the King being then ready to go into France, they do Enact, that after his Death, and the Death of Prince Edward, without Issue, the Crown should be to the Lady Mary, and the Heirs of her Body; but both subject to such Conditions as the King should limit by his Letters Patents, or by his last Will, sign'd with his Hand: And if the Lady Mary performed not those Con-
 ditions,

ditions, that then the Crown should go to the *Lady Elizabeth*, as if the *Lady Mary* had been dead without Issue; and if the *Lady Elizabeth* neglected to perform such Conditions, then it should go to such other Person as the King should appoint, in the same manner as before, as if the *Lady Elizabeth* had been dead without Issue. And Authority is given to him, by his Letters Patents, or his last Will, signed with his own Hand, to appoint the Crown to remain to such Person or Persons, and for such Estate, and under such Conditions as he should please.

An Oath also for observing this Statute is appointed, and it is made *Treason* to refuse it, or to disturb or interrupt any Person to whom it is limited by this Act, or should be by the King, pursuant to the Power given him thereby.

This is abundantly sufficient to prove, That it was the universal Opinion of that Age, That the Succession was wholly under the Controul of Parliament, who not only limited it as they pleased themselves, but subjected it to Conditions, and to the Appointments of others. But the thing was in its own Nature so evident, that they who had the greatest Reason, and were most concern'd to do it, did never presume to question the Power of a Parliament in this Point.

Burn. Hist Re-
form. Collect.
268.

Lethington, Secretary of Scotland, in a Letter of his, written to Sir *William Cecill*, then Secretary of State here, wherein he argues in behalf of the Title of his *Mistriss*, *Mary Queen of Scots*, to succeed *Queen Elizabeth*, against a pretended Disposition made by the last Will of *Henry* the Eighth, to his Neece, the *Lady Frances*, Daughter to the *French Queen*, if his own Issue fail'd, says of these Statutes that gave the King Power to dispose of the Crown, That they were against Equity to disinherit a Race of Foreign Princes, and that they were made in an abrupt Time, (as he terms it;) but yet he confesses, that since the thing was done, it was now valid and unavoidable, unless some Circumstances did annihilate the Limitation and Disposition made by King *Henry's* Will.

And

And so he proceeds to prove that the power which was given to the King by these Statutes, was not purposed, (which it ought to have been most strictly, and in a precise Form,) for that the King never signed the Will, but that his name, set to it, was forged: Nay, I will venture to say that in all the Books which were written to support the Claim of the *Scottish Queen* against *King Henry's Will*, (though the whole power and wealth of the *Guises* were employed to set every wit at work on that Design) there was never any stress laid upon it, or so much as a pretence that these Acts of Parliament were void or ineffectual in themselves. In that Discourse which was published by *Philip*, and composed by *Sir Anthony Brown* one of the Justices of the Common Pleas, who was (in Judge *Dodderidge's* opinion) a person of an incomparable sharpness of Wit, There was all the help that learning either in Divinity, Civil or Common Laws could give; yet there the Authority of the Parliament in the case, and the validity of these Statutes is all along admitted. Indeed they endeavour to put some other construction upon the Statutes, but their great Argument is, That *King Henry*, as King, had no power to dispose of the Crown, and therefore these Laws only gave him an Authority, and made him only as it were a Commissioner, and therefore, as all other Authorities, (especially being in Derogation of the course of the Common Line,) was to be strictly followed: They allow that he had sufficient power to Devise, and that he might Honourably have used that Power; but that he ever did exercise that Authority, is the thing denied. But it is time for us to go on.

Treatise of the Title of Queen Mary to the Succession, pag. 38, 39 &c. lib. 2. Dodd. Engl. Lawyer. pag. 8.

Edward the Sixth succeeded his Father, and took upon him a power, which surely no King ever had, to dispose of his Crown by the Will. But that disposition serving to no other purpose but to the Ruine of the *Lady Jane Grey*, His Sister *Queen Mary* first, and after *Queen Elizabeth* enjoy'd the Crown according to the Limitation of the Statute 35 H. 8. c. 1. and that one of them had no other Title, must be agreed by all: For *Queen Catherine* was alive at the time when *Elizabeth* was born: so that if the first Marriage was unlawful, *Queen Mary*, and if the second was unlawful, *Queen Elizabeth* must necessarily have been illegitimate.

I cannot but observe one passage to our present purpose, which I meet with in the time of *Queen Mary*. *Sir Edward Montague* first Lord Chief Justice of the Common Pleas, and afterwards of the Kings Bench (one who had the reputation of the ablest and wisest Lawyer of his Age,) being accused to have drawn the Will of *Edward the Sixth*, whereby that Queen was to have been disinherited, and being in great danger upon that account; drew up a State of his own case, and therein sets forth that the great reason which prevailed with him to obey the King in that particular, and upon which he did still rely for his indemnity, was, that if *Queen Mary* came to the Crown, she took it by force of the Act of Parliament which did limit it to her in Remainder, so that she came in as a purchaser and not in privy of estate to her Brother, and consequently could not punish Treasons or offences committed in his time.

Mores Reports 827. & 828.

Euliers Church-History lib. 8. fol. 5.

I must needs also observe, that in the Articles made upon the Marriage of *Q. Mary* with *Ph. of Spain*, which were confirmed by Act of Parliament, the several Crowns and Territories of *Philip* are distributed part to *Charles* the Infant of *Spain*, part to the Issue of the intended Marriage. Whereby it does appear not only what opinion all *Europe* had of the power of an English Parliament, but also that by the consent of the Estates of other Realms, Crowns might be limited and disposed out of the ordinary course of Descent.

1 Mar. Parl. 2. cap. 2.

In the first year of *Queen Elizabeth*, The Parliament recognize her Title to the Crown, with express Relation to the Statute 35 H. 8. which invests it in her and the heirs of her Body, and do enact that the Limitation made by that Statute shall stand and remain as Law for ever, and all Sentences, Judgements and Decrees to the contrary are declared to be void, and appointed to be cancell'd. And the several offences which are made Treason by another Statute in the same year, are all restrain'd to the Queen and the Heirs of her Body only. The Parliament intending to extend that new security no further

1 Eliz. c. 3.

1 Eliz. c. 5.

than her Estate in the Crown (which she took by that Parliamentary limitation) did extend.

13 Eliz. c. 1.
Raff. Treason.
27.

In her *Thirtieth* year it was Enacted, That if any person claim Title to the Crown for himself or any other, during her Life, or shall not upon Demand acknowledge her Right, *He shall be disabled during his Life to have the Crown in Succession, as if he were naturally Dead.* And to affirm Right of Succession in such claimer or usurper, (after Proclamation made of such claim or usurpation,) is made Treason. Nor does the Statute stop there, but makes it Treason, during the life of the Queen, and forfeiture of all Goods and Chattels after her decease, to affirm that the Queen, with and by the Authority of Parliament, is not able to make Laws and Statutes of sufficient force and validity to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof, or that this or any other Statute made by Parliament, with the Queens assent, is not or ought not to be for ever of sufficient force to bind and Govern all persons, their Rights and Titles that may claim any Interest or Possibility in or to the Crown in Possession, Remainder, Inheritance, Succession or otherwise. It were well if some rash men, who presume in their discourses to restrain the power of the Parliament, (that is, the King, Lords and Commons,) in the great business of the Succession, would be so wise as to remember this Act, (which is still in force) and the penalty to which they subject themselves by such sawcy Talk. That incomparable States-man the Lord *Burleigh* had another kind of opinion of the Security which an Act of Parliament could give his Royal Mistress, by making the Scottish Queen (the *Popish Successor of that time*) unable and unworthy of the Succession; as appears in a Letter which he wrote about this time to Sir *Francis Walsingham*, then Ambassadour in *France*.

Compleat
Ambassad. fol.
219.

27 Eliz. cap. 1.

In the *Twenty Seventh* year of Queen *Elizabeth*, it was enacted that if any Invasion was made, or Rebellion or other thing tending to the hurt of Her person by or for, or with the privy of any one who should or might pretend Title to the Crown, and the same should be adjudged in such manner as that Law appoints, then every person against whom such Judgment should be given, should be *excluded and disabled for ever to have or claim the Crown*; And that the Subjects of this Realm lawfully might by all forcible and possible means, pursue all such offenders: And their Issues assenting or privy thereto, are in like manner disabled and to be pursued. And this Act was made in pursuance of an Association enter'd into by the People in the vacancy of Parliament out of their great zeal for the preservation of the life of that excellent Princess.

Strangways
Hist. of Mary
Queen of
Scotland, fol.
179.

By vertue of his Statute *Mary Queen of Scotland* was afterwards executed, as appears by the Commission for her Tryal.

King *James* her Son who was a wiser Prince, and not wholly govern'd by Priests as his Mother was, though he had the same pretences that she had, yet never disputed his Right, or set on foot any Title during the life of the ever Renowned Queen; though she would never suffer him to be declared her Successor. He was too wise to incur the like disability as his Mother had done, and to contest a Title Establish'd by Parliament.

After Queen *Elizabeth's* Death, The Act of Recognition made upon King *James* his coming to the Crown, doth particularly insist upon that Title, which was rais'd by Act of Parliament to *Henry the Seventh*, and the Heirs of his body, and that immediately upon the Queens decease the Crown descended and came to King *James*; so that you see the Title of Queen *Elizabeth* is again acknowledged by Parliament; And the entail made by the Statute of 35 H. 8. being spent upon her death without Issue, King *James* comes in as next Heir to the old entail made the first year of *Henry the Seventh*.

Thus have I set down before you the whole course of the English Succession as plainly, and as briefly as is possible. I shall leave every man to make his own observations on this Historical Deduction: But this one observation I believe all men must make from it, That it hath been the constant opinion of all ages that the Parliament of *England* had an unquestionable power

power to Limit, Restrain and Qualify the Succession as they pleased, and that in all Ages they have put their power in practice; and that the Historian had reason for saying that seldom or never the third Heir in a right Descent enjoy'd the Crown of *England*.

*Daniel, fol. 5.
in vita H. 1.*

It were as easie to shew that in all other Kingdoms the next of Blood hath been frequently excluded from the Succession; but the History of our own Countrey is our business; yet I cannot forbear reciting the Speech which Ambassadors sent from the States of *France*, made to *Charles of Lorrain*, when they had solemnly rejected him (though he was Brother to *Louys d'Orleans* and next Heir to the Crown) and had elected *Hugh Capet* for their King. They told him that every one knew that the Succession of the Crown of *France* belonged to him, and not *Hugh Capet*. But yet (say they) the very same Laws which give you this Right of Succession; do judge you also unworthy of the same; for that you have not hitherto endeavoured to frame your manners according to the Prescript of those Laws, nor according to the usages and customs of your Countrey; but rather have ally'd your self with the *German* Nation our old Enemies, and have loved their vile and base manners. Wherefore seeing you have forsaken the ancient virtue and sweetness of your Countrey, we have also forsaken and abandon'd you; and have chosen *Hugh Capet* for our King, and put you back, and this without any scruple of Conscience at all, esteeming it better and more just to live under him, enjoying our Ancient Laws, Customs, Privileges and Liberties, than under you the Heir by Blood in oppression, strange Customs and Cruelty. For as those who are to make a Voyage at Sea do not much consider whether the Pilot be owner of the Ship, but whether he be skilful and wary; so our care is to have a Prince to Govern us gently and happily, (which is the end for which Princes were appointed) and for these ends we judge this man fitter to be our King.

*Gerr. du Hail.
lib. 6. an. 988.*

Certainly it were a most dangerous thing to have an opinion prevail, that the King in concurrence with his Parliament should not have power to change the direct order of Succession, though the preservation both of him and his people did depend upon it. For it does directly tend to Anarchy, and makes the Government to want power to defend it self, by making such Alterations as the variety of Accidents in several ages may make absolutely necessary. There must be a supreme uncontrollable power lodged somewhere. And the men who talk at this rate, can hardly find where it is lodged in *England*, if not in the King, Lords and Commons in Parliament.

But when a man begins to ask a Reason of this Doctrine of theirs, that proximity of Blood does give a Title unchangeable by any Humane Laws; The teachers of it differ exceedingly; some of them tell us of a Divine Patriarchal Right, which Kings as Natural Fathers of their People have derived down to them from *Adam*. And this Notion though it be no older than the present Age, has been very frequent in mens Mouths and Books, and has much pleased of late (as new things use to do). But they consider not that if this be true, there never can be but one Rightful Monarch in the Universe, That is He only who is the direct and Lineal Heir of *Adam* then living. And thus these great Patrons of Absolute Power, instead of supporting, do shake the Thrones of all the Princes in the world, since none of them at this day can make out any such Title.

There are others who being desirous to bestow upon the Crown a Complement of the like nature, which they were at the same time obtaining from it, have declared in general, That Monarchy is of Divine Right, That Princes succeed by the Laws of God, That their Title is not subject to any earthly cognizance, nor owing to any consent of the People. But the consequences of this opinion are not once consider'd by these men, that thereby the property of all Subjects, and the Laws of all Countreys, are destroy'd together. For no Humane Laws or Contracts can bind or restrain a Power divinely Instituted. (Or if you like it better in the words of a great Cardinal) A Jurisdiction which is of Divine Right, is not alterable by the will or power of man.

*Card. Pullav.
Hist. conc. Trid.
l. 18. cap. 15.*

Besides,

Besides all communities which live under another Form of Government, must be guilty of violating this Divine Institution. And perhaps there are few others besides the Great *Turk* Dominions, which are govern'd as they ought to be.

In what a damnable condition are the *Venetians* and the *Netherlands*, who admit no Monarch at all? *Poland* and the *Empire*, who Elect their Princes, and will not hear talk of this Divine Right of Succession?

Aragon, where they do not only elect their King, but tell him plainly at his Coronation, that they will Depose him if he observes not the conditions which they require from him, and have a settled Officer call'd *El Justicia* for that purpose? Nay, even *France* it self, which 'tis notoriously known, does exclude Women from this Divine Right?

That Government is of Nature, and derived from God, is manifest. Nothing is more natural in Man than the Desire of Society, and without Government Society would be intolerable. But can it be proved from hence that the Government cannot be moulded into several Forms agreeable to the Interest and Dispositions of several Nations, and may not be varied from time to time as occasion requires, by the mutual consent of the Governours, and of those who are Governed?

And after all pretences of this kind, let any place of Scripture be produced wherein God obliges a people to this or that Form, till they have first obliged themselves to it by some Act of their own?

I do agree that if God by any extraordinary Revelation has ordain'd any sort of Government, or by any immediate Denomination has conferr'd a Kingdom on any Family, and has directed in what order the Crown shall descend, that all men are bound to submit to it and acquiesce in the Divine Will, as soon as it is clearly and evidently made out to them; but they must not be angry if men expect such an Evidence.

There is a third sort of men, who tell us this Realm being entirely subdued by the Conquerour, and by him left to descend to his Heirs, none of these Heirs who derive a Title under him, can deprive those who are to succeed of any Right which they ought to have, but must leave the Crown as free to them as they themselves received it from their Ancestors.

I will not here insist upon the danger that any Prince runs into who founds his Title in force, because it will be hard to prove that such a one does not leave as good a Title open for every man who can make himself strong enough. Nor need I trouble my self to shew, that all Conquest does not put the Conquerour into an Absolute Right. Though it be most evident in the case of *William the First*, who did by his Sword prosecute a claim of another nature, and meant only to acquire that Right, and after conquest rested in it. He pretended to the Crown as the Gift of King *Edward*, and to vindicate that Title he enter'd with Arms. And though his Relation to the Crown was more remote than that of *Edgar Atheling*, (then a child) yet his Title was better than *Harold's* the present Usurper, who could pretend no kindred at all, and who had himself sworn to support the Grant to *William*. Nor did he claim a Power by conquest, (though the name of Conquerour was given him by after times, says *Daniel*) but submitted to the orders of the Kingdom, desirous rather to have his Testamentary Title, than his Sword to make good his succession. But I will admit that he made an absolute conquest, and then these men will grant that he might himself dispose of this conquer'd Kingdom. Therefore if he did not leave it to descend in such a manner as they would have it go, nor did institute any such sort of Succession, surely this Argument of theirs will fall to the ground. Now 'tis plain that he never design'd that the Crown should descend, but gave it to his second Son, and thereby gave an early example of excluding and pretermittting the unworthy.

Lastly, Others object that the Fundamental Laws of the Land against which no Act of Parliament can be of force, have so established the Succession that the course of it cannot be alter'd. This is surely a new discovery unknown to our Fore-fathers, as the foregoing History does abundantly prove. But let these

these objectors be asked by what Authority these imaginary Laws were made? For if an Authority equal to that which made them be still in being, That Authority may certainly repeal them when ever it pleases to exert it self. If the King alone made them, no doubt but that he may change them too. If they will say they were made by the diffusive body of the people, they run before they are aware into the guilt of worshipping that Idol The Multitude, and make a great step towards placing the foundation of the Government upon contract and consent. But then let them produce those Laws or some Authentick memorial of them, before it be exacted from us to believe there were ever any such.

Yes, they will say, there is such an ancient Law acknowledged by all the Judges, and known to every man, that the Descent of the Crown purges all Defects whatsoever. This Maxim as it is usually repeated is in these words, and this might be admitted, and yet could not be pertinently apply'd to a case where the Descent it self is prevented by a Law. But I will not take advantage of their words, but will consider the Objection, as it stands in that Book where the first mention of it was made, and that is in the *Treatise of Henry the Seventh*, it being said there by the Judges, That the King was a person Able and Discharged of any Attainder *eo facto*, that he took upon him the Government, and to be King.

First, This was not only an extra-judicial opinion, but was not pertinent to the Question referr'd to their consideration, Whether those who were chosen into the House of Commons, and were at that time attainted of Treason might sit in Parliament, till their Attainders were Reversed; and they all agree that their Attainders should first be annulled. But then they proceed to say that there was no necessity that the Kings Attainder should be Reversed, for that he might enable himself, and needed not any Act of Reversal. But surely they said very wisely in what they said, for he who had won a Crown in the field, had gone a great way towards enabling himself to wear it. Most sure it is that if an Act of Reversal were necessary before he could sit, that then it was impossible he ever should sit there, because no such Act could be made without the Royal Assent. *Henry the Seventh* was then King *de facto*, and in possession of the Throne, and it was somewhat of the latest to consider whether he was qualified or not. Certainly it had been strange self-denial in the Judges, and a neglect of themselves, (which is not usual with them) to have alledged an Incurable Disability in the King, from whom they had their Patents and Authority.

In the next place let us consider what precedent the Judges cite to justify this opinion of theirs, and how apposite it is. *Henry the Sixth* being driven out of the Kingdom by *Edward the Fourth*, The Conquerour call'd a Parliament, and got an Act to pass, whereby *Henry* was disabled to hold the Crown. About ten years after, *Henry* regains the Kingdom, and upon this re-accession to the Crown (as 'tis usually call'd) This Act is never repeal'd. But does not every Child see the Reasons of it? For if *Henry* was Lawful King, (and before he was not to doubt that) The Act it self was void in as much as it wanted the Royal Assent. So that for him to have procured an Act of Repeal had been to affirm a Title to the Crown in *Edward*. But without doubt this opinion of the Judges as it is apply'd by the Objectors, was new and unheard of before. We see the King of France was otherwise informed by the learned men in the time of King *John*, for they thought his Blood corrupted, and him incapable of taking the Crown by Descent, because he was Attainted of Treason, which prevailed with that King to send over his Son *Lewis*, to put in his claim in right of his wife, who was the next Heir. It also ought to be observed that the true Reason why the generality of the Nation did so long approve the Title of the House of *Lancaster*, was because all the Princes of the House of *York* were Attainted of Treason, and their Blood corrupted. But as soon as ever this corruption was purged, and *Richard Duke of York* was declared Heir Apparent by Parliament, the people soon forsook the *Lancastrians*, and set the House of *York* in the Throne.

1 H. 7. f. 4. b.
Que le Roy sur-
ist person able
& discharge
d' aucun at-
tainder eo fa-
cto qu' il
prist sur lui le
Reign & estre
Roy.

Mat. Westm.
275. v. supra

*V. Sup. & Con.
Rec. 709.*

Nay, the very learned men of the same Age with these Judges, though quite otherwise, as will appear beyond contradiction in this famous case which follows. *Richard the Third* had two Elder Brothers, *Edward* and *George Duke of Clarence*. *Richard* designing to secure the Crown to himself, had procured the Children of *Edward* to be declared Illegitimate, yet still the Duke of *Clarence* had Issue living which might pretend. But observe what the Parliament say (as to this) in the first year of *Richard the Third*: "That in the seventeenth year of *Edward the Fourth*, *George Duke of Clarence* was Attainted of Treason, by reason whereof all the Issue of the said *George* was, and is Disabled and Barred of all Right and Claim, that in any case he or his Issue might have or challenge by Inheritance to the Crown and Dignity Royal of these Realms. After that we consider that you be the undoubted Heir, &c. And so they proceed affirming that all Learned men in the Laws do approve his Title. You see within less than three years before this opinion of the Judges, The whole Parliament do not only give their opinion, but assure you that all Learned men of that time held clearly that an Attainder did hinder the descent of the Crown, and incapacitate the person to take it. Nay, what goes yet further in this matter, *Richard* himself, though he was as jealous to secure his Title as ever Tyrant was, and had as good advice to discern the most distant danger: though he was always restless in endeavouring to get the *Earl of Richmond* into his Hands, who was a very remote pretender, and only descended from a Bastard of the House of *Lancaster*, yet he fear'd nothing on this side. He knew how he had wrong'd the Children of his Brother *Edward*, and could not be at ease till he had sent them out of the World, but he let the Children of his Brother *Clarence* live, without apprehending any danger from them because their blood was corrupted, and all possibility of Descent taken from them by the Attainder of their Father. It was this only preserved them alive, and not any remorse of Conscience or any niceness in sending another Nephew out of the World after those whom he had dispatcht before. This notable case attended with these circumstances, will convince every man either that the Judges intended no such thing by their opinion as some men fancy, or else at least that extra-judicial opinions were then as Apocryphal as they have been since.

Consider Lastly, the unreasonableness of this Doctrine which tends directly to subvert Government, and to put the life of the King Regnant into the hands of his Successor. The next Heir may commit Rapes and Murders and Treasons, Burn Cities or Betray Fleets, may conspire against the life of his Prince, and yet after all, if by *Flight* or *Force* he can save himself, till some of his accomplices can get the King dispatcht, in spite of all Laws and Justice he must come to the Crown, and be Innocent.

*Burn. Hist. Ref.
lib. 2. fol. 156.*

But when I reflect what sort of men I am arguing with, and how willingly they use to submit to Authority, I think I shall convince them best by citing the opinions of two great men, the one a Cardinal, the other a Lord Chancellour, both of them Martyrs for the Papal Supremacy, I mean *Fisher* and *Sir Thomas Moor*. And if their Judgments approve the power of Parliaments in the business of the Succession, it cannot but weigh very much on such occasions as this. 'Tis well known how resolution even to death they refused the Oath of Succession which the Parliament had framed, because therein the Kings Supremacy was avow'd, and therefore they cannot be suspected to dissemble, when at the very same time they declared, that if that of Supremacy was left out, they would willingly Swear an Oath to maintain the Succession of the Crown to the Issue of the Kings present Marriage, as it was then established by Parliament, and gave this reason for it, that this was in the power of a Parliament to determine; but not who was supreme head of the Church. *Sir Thomas Moor* went further, and own'd a very strange opinion of their power in this point. But he says expressly at the same time, that the Parliament had unquestionable Authority in the ordering of the Succession, and that the people were bound to obey them therein.

After

After the Testimonies of these two great Papists, it will be little to add the Testimony of a Protestant. But yet I will mention what Sir *Walter Rawleigh* (who was no inconsiderable man, though a Protestant) says in his Incomparable Preface to the History of the World: Without doubt (says he) Human Reason would have judged no otherwise but that *Henry the Fourth* had rendred the Succession as unquestionable by the Act of Parliament which he had procured to entail it on his Issues, as by his own Act he had left his enemies powerless.

But sinking men catch hold of every thing, and when they cannot object to the validity, they will tell us, That such an Act of Parliament to disinherit the next Heir is unjust and without a sufficient ground.

I will not at present enter into the dispute how far the difference of Religion, which will also necessarily draw on a change in the Government, does justify men in seeking to present the two dearest things on earth in an orderly and lawful way. I will not (though I safely might) challenge these men to tell me, where ever any settled Nation which had Laws of their own, and were not under the immediate force of Conquerour, did ever admit of a King of another Religion than their own. I will not insist on it that the Crown is not a Bare Inheritance, but an Inheritance accompanying an Office of Trust, and that if a mans defects render him incapable of the Trust, he has also forfeited the Inheritance. I need not say how far a Nation is to be excused for executing Justice summarily, and without the tedious formalities of Law, when the necessity of things requires haste, and the party flies from Justice, and his confederates are numerous and daring, and the Princes life in danger.

But this I will say, that if the Parliament have power in this thing, which I need not prove, by shewing that the ordinary course of Law allows Heirs to be disinherited of Fines and Recoveries, and that the Parliament in all ages has frequently done it by making Acts to alter the strongest Settlements, where Equity has Dictated it, though the Heirs were never in any wise criminal. There according to Sir *Thomas Moors* opinion the people are bound in conscience to obey their Laws, and must not pretend to enquire whether they were made upon just grounds. For by the same Reason they may pretend that all other Laws were made without just cause, and refuse obedience to any of them. And surely those that should do so, would be an Excellent *Loyal Party*. God defend this Nation from such Loyalty, as opposes it self to the King and the Laws, and God defend the King from the pretended Duty and Submission of those men, who whilst they talk of his power so much Renounce it openly, and oppose what would be the greatest security of his person, and in effect set up his Successor above him, even in his life time.

F I N I S.